

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RAVI SINGH DHILLON,

Petitioner,

vs.

JANET NAPOLITANO, Secretary of the  
Department of Homeland Security; et al.

Respondents.

CASE NO. 09cv0540 JM(AJB)

ORDER GRANTING LEAVE TO  
PROCEED IN FORMA PAUPERIS;  
ORDER PROVISIONALLY  
DENYING MOTION FOR  
APPOINTMENT OF COUNSEL;  
SCHEDULING ORDER

**Motion to Proceed in Forma Pauperis**

On March 18, 2009, Petitioner, a detainee in the custody of the Department of Homeland Security, Bureau of Immigration and Customs Enforcement, proceeding in propria persona, has filed a Petition for Writ of Habeas Corpus (“Petition”) pursuant to 28 U.S.C. § 2241. Petitioner has also filed a request to proceed in forma pauperis which reflects a \$0.08 trust account balance at the facility in which he is presently confined. Petitioner also declares that he possess no significant asset or source of funds. Petitioner cannot afford the \$5.00 filing fee. Thus, the Court grants Petitioner’s application to proceed in forma pauperis, and allows Petitioner to prosecute the above-referenced action as a poor person without being required to prepay fees or costs and without being required to post security. The Clerk of the Court shall file the Petition without prepayment of the filing fee.

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1     **Motion for Appointment of Counsel**

2              Petitioner, in an application prepared by the Federal Defenders, requests the appointment of  
 3 counsel to assist him in prosecuting his Petition brought pursuant to 28 U.S.C. §2241 because he has  
 4 little legal experience, lacks the financial wherewithal to obtain representation, and, given the  
 5 complexity of the issues raised, cannot adequately address the issues raised in the Petition. The  
 6 Constitution provides no right to appointment of counsel in a civil case unless an indigent litigant may  
 7 lose her physical liberty if she loses the litigation. See Lassiter v. Dept. of Social Services, 452 U.S.  
 8 18, 25 (1981). Under 18 U.S.C. §3006A(a) and 28 U.S.C. § 1915(e)(1), however, district courts are  
 9 granted discretion to appoint counsel for indigent persons under “exceptional circumstances” or in the  
 10 “interests of justice.” See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991). “A finding of  
 11 exceptional circumstances requires an evaluation of both the ‘likelihood of success on the merits and  
 12 the ability of the plaintiff to articulate [his] claims pro se in light of the complexity of the legal issues  
 13 involved.’ Neither of these issues is dispositive and both must be viewed together before reaching a  
 14 decision.” Id. (quoting Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986)).

15              In light of the legal and factual issues raised in the Petition, the court cannot adequately assess  
 16 the complexity of the issues or Petitioner’s ability to articulate his claims. In broad brush, Petitioner,  
 17 who does not challenge his removability, alleges that he was taken into immigration custody on  
 18 February 5, 2008 and that Respondents have failed to effectuate his removal within the presumptively  
 19 reasonable six month period of time identified in Zadvydas v. Davis, 533 U.S. 678, 689 (2001). The  
 20 Petition notes that India is one of the countries that the United States has listed as having had  
 21 “significant problems obtaining travel documents.” U.S. General Accounting Office, Immigration  
 22 Enforcement, at \*21 (May 2004). Petitioner also represents that the Government claimed that the  
 23 reason that Petitioner had not been deported to India was due to his failure to provide the “the Indian  
 24 Consulate with an accurate address in India.” (Petition, Exh. A). The court concludes that an answer  
 25 to the Petition will provide the court with the factual and legal context required to assess Petitioner’s  
 26 motion for the appointment of counsel.

27              In sum, the court provisionally denies the motion for appointment of counsel. Following the  
 28 submission of the Government’s answer, Petitioner may again request appointment of counsel in light

1 of the factual record and legal arguments submitted by Respondents.

2 **Scheduling Order**

3       **1. RESPONDENT IS ORDERED** to file and serve an answer or other responsive pleading  
4 to the Petition no later than April 17, 2009. The answer shall include any and all transcripts or other  
5 documents relevant to the determination of the issues presented in the Petition.

6       **2. IT IS FURTHER ORDERED** that if Petitioner wishes to reply to the responsive pleading,  
7 a traverse or other appropriate pleading must be filed and served no later than May 1, 2009. At that  
8 time, unless otherwise notified by the court, the matter will be taken under submission without oral  
9 argument pursuant to Local Rule 7.1(d)(1).

10      **3. IT IS FURTHER ORDERED** that the Clerk of Court shall serve a copy of this order and  
11 the petition on the United States Attorney General or an authorized representative.

12      **IT IS SO ORDERED.**

13 DATED: March 19, 2009



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15      Hon. Jeffrey T. Miller  
United States District Judge

16 cc:           All parties

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